

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.02.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL No.2651 of 2002

The Forest Range Officer
Valparai Range Waterfalls Post
(via) Pollachi
Coimbatore District.

.. Appellant/Respondent

vs.

Parry Agro Industries Ltd.,
formerly known as C.W.S. (India) Ltd.,
Iyerpadi Post 642 108.
(via) Pollachi rep. by its
General Manager.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of His Lordship Mr. Justice F.M. Ibrahim Kalifulla [in W.P.No.20585 of 1993] dated 17.04.2001 in WP 20585/93 presented under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records of the respondent in Proceedings Na.Ka.No. 957/93 dated 26.10.1993 and quash the same.

For appellant : Mr. Titus Jesudoss
Special Government Pleader (Forest)

For respondent : Mr. R. Parthiban

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JUDGMENT

(Judgment of the Court delivered by P. SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 17.04.2001 made in W.P.No.20585 of 1993, in and by which the learned Judge, after finding that the impugned proceedings of the Forest Range Officer dated 26.10.1993, is in contravention of the provisions of the Tamil Nadu Forest Act, 1882 (in short, "the Act"), allowed the writ petition.

2. The respondent herein/writ petitioner is a company incorporated under the provisions of the Companies Act, 1956, and engaged in cultivation and manufacture of Tea, Coffee and Cardamom. It owns 5 Estates in the Anamallais Hills of a total extent of 8472 acres and the entire land was assigned to them

by the Government of Madras in the year 1929 by way of various Government Orders. The land was originally assigned in the name of English and Scottish Joint Co-operative Wholesale Society Ltd., which was subsequently changed as Pari Agro Industries Limited, the petitioner herein. According to the petitioner, the petitioner has been the owner of the land from 1929 onwards, i.e., from the date of assignment. It is its further case that as per the provisions of the Plantation Labour Act, 1951, the petitioner is bound to provide water for plantation labour within the Estate itself. For this purpose, the petitioner requires water to feed the population, who are residing within the Estate. Apart from the Estate workers, there are other residents such as, Postal, Telephone, Electricity, Central Excise, Forest Guards, etc. It is also averred that from 1929 onwards the petitioner has been drawing water from a reserve forest area in Iyerpadi Estate and the petitioner is using the water only for domestic purposes and not for any other purpose. For the purpose of drawing water from the reserve forest, the petitioner has installed a small check-dam and pipelines in one of the streams flowing from the reserve forest area. While so, without any notice, the Forest Range Officer, Valparai Range, the respondent in the writ petition, issued an order dated 26.10.1993 directing the petitioner to dismantle all those materials and to find an alternative source of water supply. It is further stated that the action of the Forest Range Officer is contrary to Section 20 of the Act, which empowers only the District Forest Officer to stop the use of water course in a reserve forest and the same has to be exercised only with the prior sanction of the Government. In the absence of any such sanction by the Government and of the fact that the impugned order was passed by the Forest Range Officer, who is not competent under the Act, the same cannot be sustained.

3. Before the learned single Judge, the Forest Range Officer, Valparai Range has filed a counter affidavit contending that the action of the writ petitioner is in violation of Tamil Nadu Forest Act, 1882, Wild Life (Protection) Act, 1972 and the Forest Conservation Act, 1980. By the impugned order, the petitioner was asked to find out an alternative source of water supply. He being the officer in-charge of the entire range, it is his duty to protect and safeguard the subject area and therefore, the impugned order is not suffering from any irregularity or illegality.

4. The learned Judge, after considering the claim of the parties and placing reliance on Section 20 of the Act, quashed the order dated 26.10.1993 passed by the Forest Range Officer as he is not competent to issue such an order, and allowed the writ petition. As said earlier, questioning the same, the Forest Range Officer has filed the present appeal.

5. Heard Mr. Titus Jesudoss, learned Special Government Pleader (Forest) for the appellant and Mr. R. Parthiban, learned counsel for the respondent.

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6. Inasmuch as the writ petitioner as well as the learned

single Judge heavily relied on Section 20 of the Act, it is apt to refer the same.

"Section 20. Power to stop ways and water course in reserve forest: The District Forest Officer may from time to time with the previous sanction of the Government stop any public or private way or water course in a reserved forest; provided that a reasonably convenient substitute for the way or water course so stopped already exists, or has been provided constructed in lieu thereof. "

7. It is the specific case of the petitioner that entire extent of land was assigned to the petitioner Company (in its original name) by way of Government Orders as early as in 1929. It is also its claim that from the date of assignment, the petitioner has been in enjoyment of the land. It is asserted by the petitioner that from the date of assignment, in order to provide water to its employees and other officers residing in the land, water is taken from the stream running through the land. In such circumstances, in the light of the language used in Section 20 of the Act referred to above, though the Forest Range Officer, a lower level Officer, is competent to take action against certain violations, we are of the view that the proper authority empowered to take action against the petitioner is the District Forest Officer, that too, with the prior sanction of the Government, considering the fact that the land is lying in reserve forest area. Though the learned Special Government Pleader has referred to various provisions of other enactments, in the light of the undisputed factual position, viz., the assignment of the land was made even in the year 1929 and the petitioner has all along been drawing water from the stream in question for its workmen and other officials, we hold that in view of Section 20 of the Act, it is the District Forest Officer, who alone is empowered to interfere with the affairs of the writ petitioner, if there is any violation, that too with the prior sanction of the Government. These aspects have been duly considered by the learned single Judge, who rightly quashed the impugned order of the Forest Range Officer as he is not an authority empowered to pass such an order under Section 20 of the Act. It is made clear that it should not be misunderstood that the Forest Range officer has no power to take action against anyone for violation of the provisions of the Act and Rules framed thereunder, and in the peculiar factual position as mentioned above as well as of the fact that Section 20 of the Act alone is applicable to the case on hand, we concur with the conclusion arrived at by the learned single Judge and reject the stand taken by the Forest Department. It is also made clear that considering the interest of wildlife animals, if the District Forest Officer is of the view that necessary action has to be taken against the petitioner, he is free to apprise the same to the Government and pass appropriate orders, after getting permission from the Government in terms of Section 20 of the Act.

With the above observation, the writ appeal is dismissed.
No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

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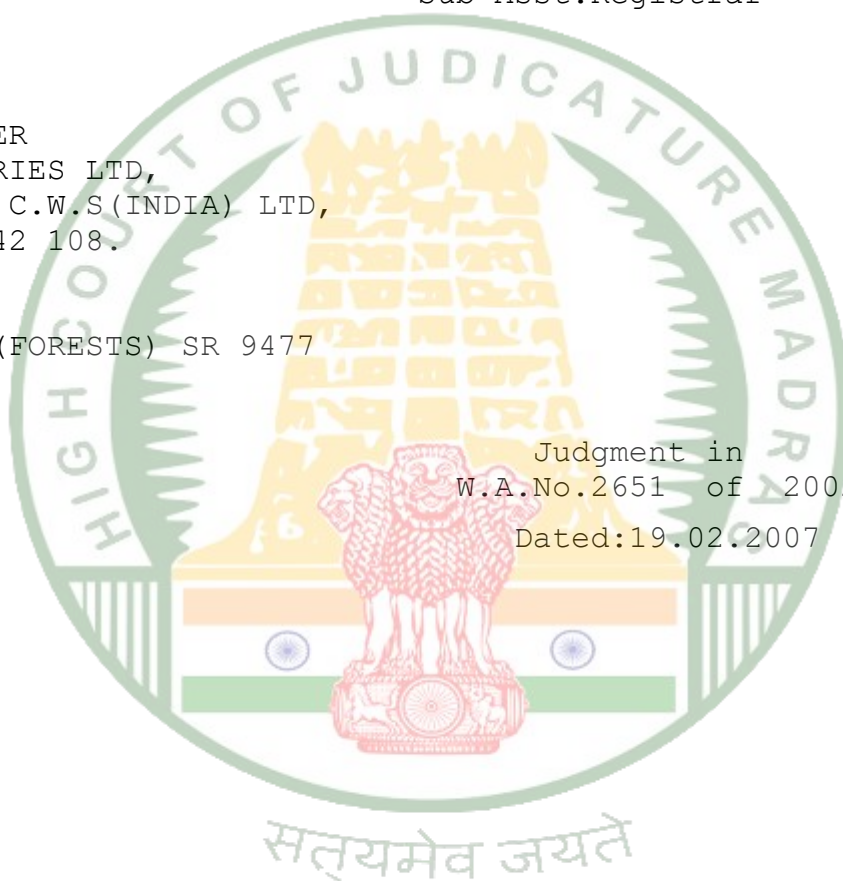
THE GENERAL MANAGER
PARRY AGRO INDUSTRIES LTD,
FORMERLY KNOWN AS C.W.S(INDIA) LTD,
IYERPADI POST - 642 108.
(VIA) POLLACHI.

1 CC TO SPL. G.P (FORESTS) SR 9477

Judgment in
W.A.No.2651 of 2002
Dated:19.02.2007

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